

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
PAGING SYSTEMS, INC.)	
Assignor)	
)	
and)	File No. 0002647326
)	
AMERICAN TELECASTING OF OKLAHOMA,)	
INC.)	
Assignee)	
)	
Application For Assignment of Broadband Radio)	
Service Station WHT743, Wichita, Kansas)	

MEMORANDUM OPINION AND ORDER

Adopted: January 29, 2007

Released: January 29, 2007

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On June 23, 2006, Paging Systems, Inc. (“PSI”) filed an application seeking Commission consent to assign the license for Broadband Radio Service (BRS) Station WHT743, Wichita, Kansas, to American Telecasting of Oklahoma, Inc. (“American Telecasting”).¹ On July 12, 2006, Warren C. Havens (“Havens”), AMTS Consortium LLC (“AMTS Consortium”), Telesaurus Holdings GB LLC (“THL”), Telesaurus VPC LLC (“TVL”), and Intelligent Transportation and Monitoring Wireless LLC (“Intelligent”) filed, collectively, a petition to deny the application (“PTD”).² For the reasons discussed below, we dismiss the PTD.

II. BACKGROUND

2. On November 6, 2001, PSI was granted a license to operate BRS Station WHT743 on the E Channel Group in Wichita, Kansas.³ On June 23, 2006, PSI filed an application to assign the license for Station WHT743 to American Telecasting, a wholly owned subsidiary of the Sprint Nextel Corporation (“Sprint Nextel”). According to the applicants, the assignment of Station WHT743 to American Telecasting will serve the public interest because it will permit Sprint Nextel to deploy broadband

¹ File No. 0002647326 (June 23, 2006) (Application).

² Warren C. Havens, AMTS Consortium LLC, Telesaurus Holdings GB LLC, Telesaurus VPC LLC, and Intelligent Transportation and Monitoring Wireless LLC, Petition to Deny (July 12, 2006). We herein refer to the petitioning parties collectively as petitioners.

³ Specifically, BRS Station WHT743 is authorized to use Channels E1 through E4.

infrastructure more efficiently and develop wireless, interactive multimedia communications solutions for consumers in the Wichita, Kansas area.⁴

3. On July 12, 2006, the instant PTD was filed against the application. PSI filed an opposition to the PTD on July 26, 2006.⁵ A reply to the opposition was thereafter filed by the petitioners on August 7, 2006.⁶

III. DISCUSSION

4. The petitioners contend that they have standing to file the PTD because they hold licenses “which may provide competitive services” to those offered by PSI⁷ and because “they are competitors with PSI in several markets and within various radio services.”⁸ The petitioners ask the Commission to deny the application to assign Station WHT743 from PSI to American Telecasting because PSI “lacks the character and fitness to hold or assign the [license for Station WHT743] due to its actions, including numerous fraudulent licensing applications, in the AMTS service.”⁹ The PTD explains that “[t]hese issues of fraud and disqualification to hold licenses are currently pending before the Commission.”¹⁰ The PTD thereafter notes and incorporates by reference those pleadings filed by the petitioners challenging the basic character qualifications of PSI in other proceedings.¹¹ In the alternative, the petitioners request that the Commission hold the instant assignment application in abeyance pending final resolution of the referenced proceedings or condition any grant of it upon the outcome and findings of these proceedings.¹²

⁴ See Application, Public Interest Statement.

⁵ Paging Systems, Inc., Opposition to Petition to Deny (July 26, 2006) (Opposition).

⁶ Warren C. Havens, AMTS Consortium LLC, and Telesaurus Holdings GB LLC, Telesaurus VPC LLC, and Intelligent Transportation and Monitoring Wireless LLC, Reply to Opposition to Petition to Deny (Aug. 7, 2006) (Reply).

⁷ See PTD at 1. The PTD generally states that the petitioners’ “license holdings, as witnessed by the Commission’s ULS records,” provide them with the requisite standing to challenge the instant assignment application of a BRS station. *Id.* Specifically, the PTD lists Automated Maritime Telecommunications System (AMTS) Station WQCP815; Multiple Address System (MAS) Stations WQER424, WQER425, WQER426, WQER427, WQER428, WQER429; and a pending application for a Location and Monitoring Service (LMS) geographic area license for Wichita, Kansas as those “license holdings” which may provide competitive services to those offered by Station WHT743. *See id.* at 1 n.1. In addition, the PTD notes that an application is pending to assign 220-222 MHz Service Stations WPOI542, WPOI543, WPOI544, Wichita, Kansas, to Havens. *See id.*

⁸ The PTD does not specify the markets in which the petitioners compete with PSI. The PTD does reference, however, AMTS and MAS as examples of two services within which the petitioners may compete with PSI. *See id.* at 1. The PTD raises concerns that PSI will benefit from the instant assignment of BRS Station WHT743 to American Telecasting and furnish PSI with additional funds with which it may “more effectively hinder, compete and pursue frivolous actions deleterious to Petitioners. . . .” *Id.* at 1. None of the petitioners holds BRS licenses in the Wichita, Kansas area.

⁹ *Id.* at 1.

¹⁰ *Id.* at 1.

¹¹ *See id.* at 2.

¹² *See id.* at 3.

5. PSI contends that the petitioners lack standing to petition for the denial of the instant assignment application.¹³ PSI states that Section 309(d)(1) of the Communications Act of 1934, as amended,¹⁴ “requires specifics concerning the location, operational status and nature of service actually provided that would be competitive with the services provided by PSI.”¹⁵ PSI argues that services that may be offered by an applicant or licensee in the future and applications that have not yet been acted upon by the Commission are insufficient to accord the petitioners standing to file the instant PTD.¹⁶ PSI also contends that the petitioners have raised similar allegations in the context of other Commission proceedings and that “this proceeding is not the place . . . to reargue the positions already taken in other matters still pending.”¹⁷ PSI alleges that the “so-called facts by Petitioners are nothing more than allegations and speculation contained in other filings.”¹⁸ PSI emphasizes that the PTD fails to cite a Commission decision that makes adverse findings with respect to PSI’s qualifications to hold Commission licenses.¹⁹

6. Section 1.939(d) of the Commission’s Rules requires that a petition to deny contain specific allegations of fact sufficient to make a *prima facie* showing that the petitioner is a party in interest and that a grant of the application would be inconsistent with the public interest, convenience and necessity.²⁰ To establish a party in interest standing, a petitioner must allege facts sufficient to demonstrate that grant of the subject applications would cause it to suffer a direct injury.²¹ In addition, a petitioner must demonstrate a causal link between the claimed injury and the challenged action.²² Based on our review of the record in this proceeding, we find that the PTD fails to meet this standard.²³

7. We find that the PTD fails to contain specific allegations of fact sufficient to make a *prima facie* showing that the petitioners, individually or collectively, have the requisite standing to file the

¹³ See Opposition at 3-4.

¹⁴ 47 U.S.C. § 309(d)(1).

¹⁵ Opposition at 4.

¹⁶ See *id.*

¹⁷ *Id.* at 5. PSI also notes that the Commission has taken action in a number of the proceedings that were identified by the petitioners. See *id.* at 6. The petitioners respond by noting that any Commission action taken in those proceedings is not final because they have filed petitions seeking reconsideration or applications seeking full Commission review of those decisions. See Reply.

¹⁸ See Opposition at 6.

¹⁹ See *id.*

²⁰ 47 C.F.R. § 1.939(d).

²¹ See *AT&T Wireless PCS, Inc., Order*, 15 FCC Rcd 4587, 4588 ¶ 3 (WTB CWD 2000) (*AT&T Wireless*) (citing *Sierra Club v. Morton*, 405 U.S. 727, 73 (1972); Lawrence N. Brandt, *Memorandum Opinion and Order*, 3 FCC Rcd 4082 (1988)).

²² *AT&T Wireless*, 15 FCC Rcd at 4588 ¶ 3 (citing *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 72, 78 (1978)).

²³ In addition, given our disposition of this matter, we do not reach PSI’s other procedural challenge to the PTD, which asserts that service of the PTD on PSI’s counsel was defective under 47 C.F.R. § 1.47. See Opposition at 2-3.

instant PTD.²⁴ The petitioners are required to specifically plead and establish standing in the PTD.²⁵ Petitioners fail to explain how any of the license holdings referenced in the PTD²⁶ accord it broad standing to challenge the instant application to assign a BRS station from PSI to American Telecasting.²⁷ The petitioners' reliance on *Mobex*²⁸ is misplaced.²⁹ *Mobex* addressed the specific issue of whether, "in certain instances, the need to locate and monitor mobile radio units could be equally met by AMTS or LMS."³⁰ *Mobex* does not support the petitioners' broad presumption that holding a license in any wireless service in the Wichita, Kansas area is sufficient to accord them standing to file the instant PTD against an application to assign a BRS station in the Wichita, Kansas area from PSI to American Telecasting.³¹ The PTD offers

²⁴ See 47 C.F.R. § 1.939(d)(1). Section 309(d)(1) of the Communications Act, as amended, permits any "party in interest" to file a petition to deny any application. 47 U.S.C. § 309(d)(1). To establish standing, a petitioner must show "(1) a distinct and palpable personal injury-in-fact that is (2) traceable to the respondent's conduct and (3) redressable by the relief requested." See Weblink Wireless, Inc., *Memorandum Opinion and Order*, 17 FCC Rcd 24642, 24647 ¶ 11 (WTB 2002); AT&T Corp., Complainant, v. Business Telecom, Inc., Defendants, *Order on Reconsideration*, 16 FCC Rcd 21750, 21753-21754 ¶ 7 (2001); Chris C. Hudgins, *Order on Reconsideration*, 16 FCC Rcd 7941 (2001).

²⁵ See 47 C.F.R. § 1.939(d)(1).

²⁶ See PTD at 2. We reject the petitioners' attempt to broadly establish standing by generally referencing the petitioners' "license holdings, as witnessed by the Commission's ULS records." PTD at 1. 47 C.F.R. § 1.939(d)(1) requires a petitioner to set-forth specific allegations of fact to make a *prima facie* showing that the petitioner is a party in interest. However, we will herein address the issue of whether the specific license holdings referenced in the PTD accord the petitioners' standing to challenge the instant assignment application of a BRS station. See PTD at 2.

²⁷ See PTD at 1-2; see also Reply at 2-3.

²⁸ Mobex Network Services, LLC, *Order*, 18 FCC Rcd 12305 (WTB PSPWD 2003) (*Mobex*).

²⁹ See PTD at 1-2; see also Reply 2-3.

³⁰ *Mobex*, 18 FCC Rcd at 12307 ¶ 5. Specifically, the former Public Safety and Private Wireless Division (PSWPD) of the Wireless Telecommunications Bureau concluded that it was conceivable for AMTS and LMS to compete for customers who need to locate and monitor mobile radio units. See *id.* Therefore, in *Mobex*, an LMS licensee was found to have standing to file a petition to deny against an application to modify AMTS facilities "in view of the fact that there was a service area overlap" where the need to locate and monitor mobile radio units could be equally met by the AMTS licensee or the LMS licensee within that service area. *Id.*

³¹ See PTD at 1-2; see also Reply 2-3. The PTD references other proceedings where one or more of the petitioners were found to have standing to file a petition to deny against PSI or another applicant or licensee. See PTD at 2. However, the petitioners fail to explain the relevancy of those proceedings in the context of the instant PTD. For example, the former Public Safety and Critical Infrastructure Division (PSICD) of the Wireless Telecommunications Bureau found that AMTS Consortium and Intelligent had standing to challenge the long-form AMTS application filed by PSI at the conclusion of Auction No. 61 because AMTS Consortium and Intelligent were both competing participants in Auction No. 61. See Maritime Communications Land Mobile, LLC, Paging Systems, Inc., *Order*, 21 FCC Rcd 8794 (WTB PSCID 2006) (*PSI AMTS Auction 61 Order*); see also Paging Systems, Inc., *Order*, 21 FCC Rcd 3032 (WTB PSCID 2006) (finding that Intelligent had standing to file a petition to deny against the long-form AMTS application filed by PSI in Auction No. 59 because it was a competing bidder against PSI in Auction No. 59); *High Plains Wireless, L.P. v. FCC*, 276 F.3d 599, 605 (D.C. Cir. 2002) (holding that auction participant had standing to challenge award to another of a license for which it bid).

no explanation how the petitioners' referenced AMTS³² licenses, MAS³³ licenses, or LMS³⁴ applications could be used to provide high-speed, high-capacity broadband service to compete with BRS³⁵ facilities for the provision of integrated access to voice, high-speed data, video-on-demand, and interactive delivery services from a wireless device.³⁶ We also reject the petitioners' contention that, because "they are competitors with PSI in several markets and within various radio services,"³⁷ they have standing to file the instant PTD.³⁸ The petitioners cite no precedent for such a broad declaration of standing. Accordingly, we dismiss the PTD.³⁹

³² AMTS stations provide automated, integrated, interconnected ship-to-shore communications similar to a cellular phone system for tugs, barges, and other maritime vessels. See Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, GEN Docket No. 88-732, 6 FCC Rcd 437, 437 ¶ 3 (1991) (*AMTS First Report and Order*).

³³ MAS is a private fixed microwave radio service that operates on spectrum in the 900 MHz band for point-to-multipoint and multipoint-to-point communications. See Amendment of the Commission's Rules Regarding Multiple Address Systems, *Report and Order*, WT Docket No. 97-81, 15 FCC Rcd 11956, 11957 ¶ 1 (2000), corrected by Erratum, 15 FCC Rcd 16145, reconsideration granted in part, 16 FCC Rcd 12181 (2001) (*MAS Report and Order*). MAS licenses are available for the terrestrial point-to-multipoint and point-to-point fixed and mobile transmissions of a licensee's products or services, excluding video entertainment material, to a licensee's customer or for its own internal communications.

³⁴ LMS provides the use of non-voice signaling methods to locate or monitor mobile radio units. LMS systems may transmit and receive voice and non-voice status and instructional information related to such units. See 47 C.F.R. § 90.7.

³⁵ BRS provides integrated access to broadband technologies, including high-speed digital technologies that provide consumers integrated access to voice, high-speed data, video-on-demand, and interactive delivery services. In The Matter Of Amendment Of Parts 1, 21, 73, 74 And 101 Of The Commission's Rules To Facilitate The Provision Of Fixed And Mobile Broadband Access, Educational And Other Advanced Services In The 2150-2162 And 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 03-66, 19 FCC Rcd 14165, ¶ 9 (2004).

³⁶ See, e.g., *Mobex*, 18 FCC Rcd at 12307 ¶ 5 (discussed above); see also *New World Radio, Inc. v. FCC*, 294 F.3d 164, 169-72 (D.C. Cir. 2002) (standing "is premised on the petitioner's status as a *direct* and *current* competitor whose bottom line may be adversely affected by the challenged government action," so no standing to challenge license grant that "is, at most, the first step in the direction of future competition" and thus economic injury dependent on "chain of events"); see also *KERM, Inc. v. FCC*, 353 F.3d 57, 61 (D.C. Cir. 2004) (no standing to challenge FCC decision not to pursue enforcement action against station that serves much of the same audience as petitioner where latter made only "bare allegations" of competitive injury without any evidence of adverse financial effects resulting from broadcast of disputed commercials) (quoting *Sierra Club v. EPA*, 292 F.3d 895, 898 (D.C. Cir. 2002)).

³⁷ The PTD does not specify the markets in which the petitioners compete with PSI. The PTD does reference, however, AMTS and MAS as examples of two services within which the petitioners may compete with PSI. See PTD at 1. None of the petitioners holds BRS licenses in the Wichita, Kansas area.

³⁸ The PTD raises concerns that PSI will benefit from the instant assignment of BRS Station WHT743 to American Telecasting and thereby obtain additional funds that could be used to compete against the petitioners in other markets and in other services, such as AMTS and MAS. See PTD at 1.

³⁹ See 47 C.F.R. § 1.41.

8. While the PTD has been dismissed, it is in our discretion to informally consider its allegations.⁴⁰ We have determined that petitioners' arguments provide no basis for denying the Application. Petitioners do not contend that PSI has engaged in any misconduct with respect to the stations at issue. We also note that petitioners' allegations concerning Auction 61 and the AMTS stations have been rejected in other contexts and that the arguments will be considered when the pending petitions challenging those orders are resolved.⁴¹

9. The former PSCID specifically rejected the petitioners' allegation that PSI lacks the requisite character qualifications to be a Commission licensee in the *PSI MAS Order*.⁴² In that proceeding, the petitioners filed a petition to deny PSI's long-form application for the MAS licenses for which PSI was the high bidder in Auction No. 59.⁴³ As in the instant PTD, the petitioners challenged the basic character qualifications of PSI in that proceeding and incorporated by reference several other pleadings and proceedings where the petitioners raised the issue before the Commission.⁴⁴ The former PSCID found that "specific findings and legal conclusions regarding the construction status of, and PSI's representations regarding, the Great Lakes AMTS stations and AMTS Station WHG545 are more appropriately considered in the pending proceedings involving those stations, rather than the instant proceeding."⁴⁵ The former PSCID noted that, "[t]o date, there has been no finding against PSI in those proceedings, or in any other proceeding, of a disqualifying lack of character."⁴⁶ Therefore, the former PSCID concluded that, "[i]n the absence of such a finding, or at least a determination in one of those other proceedings that PSI's basic qualifications to hold any Commission license should be designated for hearing, we see no basis to

⁴⁰ See 47 C.F.R. § 1.41.

⁴¹ See *Maritime Communications Land Mobile, LLC, Paging Systems, Inc., Order*, 21 FCC Rcd 8794 (WTB PSCID 2006) (rejecting petitioners' arguments that the long-form application filed by PSI at the conclusion of AMTS Auction No. 61 should be denied because PSI's incumbent site-based B-Block license in Hawaii is no longer valid, and PSI's concealment of this invalidity fraudulently dissuaded the petitioners from bidding more aggressively on the B-Block license for that geographic area); *Paging Systems, Inc., Order*, 21 FCC Rcd 7225 (WTB PSCID 2006) (PSCID concludes that it would not further the public interest to deny a renewal application based on alleged defects in construction notifications because "the purpose of a construction notification requirement is to confirm that licensees have met their responsibility, not to cancel the licenses for legitimately operating facilities. . . . Even assuming *arguendo* that the initial activation notices were defective, deeming the licenses for the constructed stations to have automatically canceled as a result would not further the purpose of the construction notification requirement.") (internal citation omitted); *Paging Systems, Inc., Order on Reconsideration*, 21 FCC Rcd 5848 (WTB PSCID 2006) (affirming the denial of a petition to deny the long-form application filed by PSI at the conclusion of the first auction for AMTS licenses (Auction No. 57)); see also *Paging Systems, Inc., Order*, 20 FCC Rcd 8145 (WTB PSCID 2005).

⁴² See *Paging Systems, Inc., Order*, 21 FCC Rcd 3032 (WTB PSCID 2006) (*PSI MAS Order*).

⁴³ MAS is a private fixed microwave radio service that operates on spectrum in the 900 MHz band for point-to-multipoint and multipoint-to-point communications. See Amendment of the Commission's Rules Regarding Multiple Address Systems, *Report and Order*, WT Docket No. 97-81, 15 FCC Rcd 11956, 11957 ¶ 1 (2000), corrected by Erratum, 15 FCC Rcd 16145, reconsideration granted in part, 16 FCC Rcd 12181 (2001) (*MAS Report and Order*).

⁴⁴ See *PSI MAS Order*, 21 FCC Rcd at 3034-3036 ¶¶ 5, 8-10; see also PTD at 2.

⁴⁵ *PSI MAS Order*, 21 FCC Rcd at 3036 ¶ 10.

⁴⁶ *Id.*

deny the instant Application.”⁴⁷ The petitioners are currently seeking reconsideration of the *PSI MAS Order*.⁴⁸ We find that the same rationale applies here.

IV. CONCLUSION AND ORDERING CLAUSES

10. For the reasons discussed above, we find that the PTD fails to contain specific allegations of fact sufficient to make a *prima facie* showing that the petitioners, individually or collectively, have the requisite standing to file the instant PTD.⁴⁹ We therefore dismiss the PTD. After considering the PTD as an informal complaint,⁵⁰ we conclude that the petitioners have failed to demonstrate how denial of the instant assignment application would serve the public interest.

11. ACCORDINGLY, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 309, and Section 1.939 of the Commission’s Rules, 47 C.F.R. § 1.939, that the Petition to Deny filed by Warren C. Havens, AMTS Consortium LLC, Telesaurus Holdings GB LLC, Telesaurus VPC LLC, and Intelligent Transportation and Monitoring Wireless LLC on July 12, 2006 IS DISMISSED.

12. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.948 of the Commission’s Rules, 47 C.F.R. § 1.948, that the licensing staff of the Broadband Division SHALL PROCESS the application filed by Paging Systems, Inc. (File No. 0002647326) in accordance with this *Memorandum Opinion and Order* and the applicable Commission’s Rules.

13. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission’s Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau

⁴⁷ *Id.* The former PSCID further noted that “[e]ven if it is ultimately determined that PSI’s applications misstated the construction status of the AMTS stations in question, as alleged by the Petitioners, it would not necessarily call into question PSI’s basic qualifications.” *Id.*

⁴⁸ See Warren C. Havens, Telesaurus VPC LLC, and Telesaurus Holdings GB LLC, Intelligent Transportation & Monitoring Wireless LLC, Petition for Reconsideration, File No. 0002232564 (filed Apr. 24, 2006).

⁴⁹ 47 C.F.R. § 1.939(d); 47 U.S.C. § 309(d)(1).

⁵⁰ See 47 C.F.R. § 1.41.